

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

09 CV 1859

PEARSON EDUCATION, INC. AND  
CENGAGE LEARNING INC.

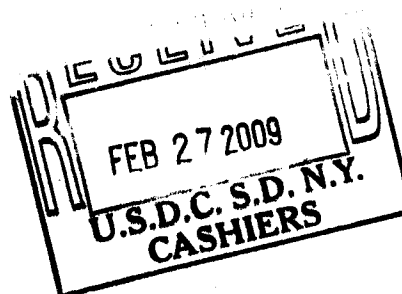
**JUDGE McMAHON**  
-against-

Plaintiffs,

09 Civ.

SHERVIN RAFII D/B/A VINNY RAF  
D/B/A TEST BANK KING D/B/A TB\_SM  
AND JOHN DOE NOS. 1-5,

Defendants.



COMPLAINT

Plaintiffs Pearson Education, Inc. ("Pearson") and  
Cengage Learning Inc. ("Cengage"), by their undersigned  
attorneys, for their complaint against defendants Shervin Rafii  
d/b/a Vinny Raf d/b/a Test Bank King d/b/a TB\_SM and John Doe  
Nos. 1-5, aver:

Nature of the Action

1. Plaintiffs are bringing this action to obtain  
legal and equitable relief to remedy defendants' infringement of  
plaintiffs' copyrights through their sales of copies of  
instructors' solutions manuals.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1391.

Parties

4. Pearson is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Lake Street, Upper Saddle River, New Jersey 07458.

5. Cengage is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 200 First Stamford Place, 4<sup>th</sup> Floor, Stamford, Connecticut 06902.

6. Upon information and belief, defendant Shervin Rafii is a natural person presently residing at 1093 Danielle Drive, Costa Mesa, California 92626.

7. Upon information and belief, defendants John Doe Nos. 1-5 are natural persons whose identities are presently unknown to plaintiffs.

The Business of Plaintiffs

8. Each plaintiff publishes a variety of works, including educational books.

9. As a standard practice, each plaintiff requires its authors to assign the copyrights to them or grant them the exclusive rights of reproduction and distribution in the United States. This practice enables each plaintiff to maximize the dissemination of each work.

10. Plaintiffs invest significant monies to publish their copyrighted works. Plaintiffs, for example, make substantial investments in royalties, content creation, licensing, copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

11. Plaintiffs earn a substantial portion of their revenue from the publication of their copyrighted works and would suffer serious financial injury if their copyrights were not enforced. A substantial decline in their income could cause plaintiffs to cease publishing one or more deserving books or journals. This would adversely impact the creation of new works, scholarly endeavor, and scientific progress.

12. An important part of plaintiffs' business is derived from publishing college textbooks. College professors select textbooks from competing publishers based on the pedagogical value and the quality of supplementary materials.

13. Instructors' solutions manuals are important supplementary materials. Professors use instructors' solutions manuals to aid in grading homework. Students, however, use

instructors' solutions manuals to cheat. Professors are less likely to select a textbook if the instructors' solutions manuals are freely and/or widely available. Accordingly, plaintiffs do not sell their instructors' solutions manuals, and tightly control their distribution to known faculty.

#### Plaintiffs' Copyrights

14. Plaintiffs routinely register their copyrights. Pearson has generally registered its copyrights in its works, including the works on Schedule A (the "Pearson Copyrights"). Cengage has generally registered its copyrights in its works, including the works on Schedule B (the "Cengage Copyrights").

#### The Infringing Acts of Defendants

15. Defendants have without permission reproduced and sold copies of plaintiffs' works. Specifically, defendants have reproduced and sold copies of plaintiffs' instructors' solutions manuals through online sales at websites including, but not limited to, Google Groups, Craigslist.com, Myspace.com, Kijiji.com and Topix.com using the username TB\_SM, the name Vinny Raf and the e-mail addresses phantom0\_1@yahoo.com and TB\_SM@yahoo.com.

#### CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

16. Plaintiffs repeat the averments contained in paragraphs 1 through 15 as if set forth in full.

17. Pearson has received United States Certificates of Copyright Registration for the Pearson Copyrights.

18. Cengage has received United States Certificates of Copyright Registration for the Cengage Copyrights.

19. The Pearson and Cengage Copyrights are valid and enforceable.

20. Defendants have infringed the Pearson and Cengage Copyrights in violation of 17 U.S.C. § 501.

21. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage plaintiffs. Plaintiffs have no adequate remedy at law for these wrongs and injuries. Plaintiffs are, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing the Pearson and Cengage Copyrights.

22. Defendants have willfully infringed the Pearson and Cengage Copyrights.

23. Plaintiffs are entitled to recover all damages sustained as a result of defendants' unlawful conduct including (1) defendants' profits, or (2) plaintiffs' damages, or alternatively (3) statutory damages.

WHEREFORE, plaintiffs demand judgment:

A. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Pearson and Cengage Copyrights in violation of 17 U.S.C. § 501;

B. Awarding plaintiffs their damages or defendants' profits, or alternatively, at plaintiffs' election, statutory damages, as a result of defendants' willful infringement of the Pearson and Cengage Copyrights;

C. Awarding plaintiffs their costs in this action, including their reasonable attorneys' fees pursuant 17 U.S.C. § 505; and

D. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
February 27, 2009

DUNNEGAN LLC

By



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Schedule A  
"Pearson Copyrights"

Title    (Date of Registration)    (Registration #)

1. Elementary Statistics, 10e (January 3, 2006) (TX0006288628)
2. International Economics: Theory & Policy, 7e (August 1, 2005) (TX0006234590)
3. Probability & Statistics, 3e (October 11, 2001) (TX0005475012)
4. Biology, 6e (December 18, 2001) (TX0005482385)
5. Advertising: Principles & Practice, 7e (May 19, 2005) (TX0006229395)
6. Strategic Management and Business Policy: Concepts & Cases, 10e (October 10, 2005) (TX0006349367)
7. Understanding Financial Statements, 7e (April 10, 2003) (TX0005738540)
8. Auditing and Assurance Services: An Integrated Approach, 12e (February 11, 2007) (TX0006548957)
9. Cost Accounting: A Managerial Emphasis, 12e (March 28, 2005) (TX0006311827)
10. Advanced Accounting, 9e (September 27, 2005) (TX0006346581)
11. Sears and Zemansky's University Physics with Modern Physics, 12e (March 12, 2007) (TX0006554247)
12. Introduction to Management Science, 9e (February 3, 2006) (TX0006361775)
13. A Gift of Fire: Social, Legal, and Ethical Issues for Computing and Internet, 3e (December 27, 2007) (TX0006844434)
14. A Framework for Marketing Management, 4e (February 25, 2008) (TX0006891165)

Schedule B  
"Cengage Copyrights"

Title    (Date of Registration)    (Registration #)

1. Statistics for Business and Economics (January 3, 2006)  
(TX6352862).
  2. Managerial Economics: Applications, Strategies, and Tactics  
(May 22, 2007) (TX6583784).
  3. International Financial Management (November 13, 2007)  
(TX6819487).
  4. Personal Financial Planning (January 3, 2006) (TX6302077).
  5. Bank Management (January 21, 2006) (TX6303413).
  6. Financial Management: Theory and Practice (May 9, 2007)  
(TX6560448).
  7. Intermediate Financial Management (September 29, 2006)  
(TX6438595).
  8. Fundamentals of Financial Management (November 9, 1998)  
(TX4889578).
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